

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

JAMES A. RUSSELL,

Petitioner,

: Case No. 3:15-cv-331

- vs -

District Judge Thomas M. Rose
Magistrate Judge Michael R. Merz

JASON BUNTING, Warden,
Warren Correctional Institution

:

Respondent.

DECISION AND ORDER STAYING JUDGMENT PENDING APPEAL

This habeas corpus case under 28 U.S.C. § 2254 is before the Court on Respondent's Motion to Stay, pending appeal to the Sixth Circuit, of this Court's Decision and order granting a conditional writ of habeas corpus (ECF No. 64). Petitioner affirmatively indicates he does not oppose the stay (ECF No. 67).

When a writ of habeas corpus is granted, Fed. R. App. P. 23(c) presumes the petitioner should be released pending appeal. Whether to grant a stay of a habeas decision pending appeal depends on the same factors usually consulted on a stay pending civil appeal. *Gillispie v. Timmerman-Cooper*, 2011 U.S. Dist. LEXIS 147841 (S.D. Ohio Dec. 22, 2011):

The factors traditionally considered in deciding whether to stay a judgment in a civil case... are

(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.

Id. at *2, quoting *Hilton v. Braunskill*, 481 U.S. 770, 776-777 (1987), citing 11 C. Wright & A. Miller, Federal Practice and Procedure § 2904 (1973).

Petitioner strongly contests the State's argument that it is likely to prevail on appeal, but concedes that the other three factors weigh in the State's favor and he will not be prejudiced by a stay.

Accordingly, it is hereby ORDERED that the effectiveness of the Writ of Habeas Corpus in this case be, and it hereby is, STAYED pending a decision by the United States Court of Appeals in its Case No. 19-3067 and any further appeal to the Supreme Court of the United States.

February 6, 2019.

s/ ***Michael R. Merz***
United States Magistrate Judge